

**BEFORE THE DIRECTOR
DEPARTMENT OF CONSUMER AFFAIRS
BUREAU OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
STATE OF CALIFORNIA**

In the Matter of the Accusation Filed Against:

Case No.: VN-2006-1433

ROSALINDA MARTINEZ
320 S. Montclair Street
Bakersfield, CA 93309

**DEFAULT DECISION
AND ORDER**

Vocational Nurse License No. VN 204442

Respondent.

Rosalinda Martinez ("Respondent") was served Accusation No. VN-2006-1433; Statement to Respondent; Notice of Defense form; copies of Government Code sections 11507.5, 11507.6 and 11507.7; and Request for Discovery by both first class and certified mail on November 12, 2008 at her address of record as provided in sections 11503 and 11505 of the Government Code of the State of California.

Respondent failed to file a Notice of Defense within the time specified in Government Code section 11506.

The Bureau of Vocational Nursing and Psychiatric Technicians ("Bureau") has determined that Respondent has waived her rights to a hearing to contest the merits of the Accusation and that the Bureau will take action on the Accusation without a hearing, pursuant to Government Code section 11520.

The Bureau makes the following findings of fact:

FINDINGS OF FACT

1. Teresa Bello-Jones, J.D., M.S.N., R.N., made and filed the Accusation solely in her capacity as the Bureau's Executive Officer.

2. On May 28, 2003, the Bureau issued Vocational Nurse License Number VN 204442 to Respondent. Said license expired on August 31, 2008 and has not been renewed.

3. Pursuant to Business and Professions Code sections 101.1(b) and 150, the Department of Consumer Affairs has succeeded to and is vested with all duties, powers, purposes, responsibilities and jurisdiction not otherwise repealed or made inoperative of the Bureau and its

1 executive officer; that the department is under the control of the Director of Consumer Affairs.

2 4. Pursuant to Business and Professions Code section 2875, the Bureau may
3 discipline any licensed vocational nurse for any reason provided in Article 3 of the Vocational
4 Nursing Practice Act.

5 5. Pursuant to Business and Professions Code section 118(b), the expiration of a
6 license shall not deprive the Bureau of jurisdiction to proceed with a disciplinary action during the
7 period within which the license may be renewed, restored, reissued, or reinstated. Under Business
8 and Professions Code section 2892.1, the Bureau may renew an expired license at any time within
9 four years after the expiration.

10 6. Respondent has subjected her license to discipline under Business and
11 Professions Code sections 490 and 2878(f), in conjunction with California Code of Regulations, title
12 16, section 2521, in that Respondent was convicted of crimes substantially related to the
13 qualifications, functions or duties of a licensed vocational nurse which to a substantial degree
14 evidence her present or potential unfitness as a licensed vocational nurse to perform the functions
15 authorized by her license in a manner consistent with the public health, safety, or welfare, as
16 described in Accusation No. VN-2006-1433, a copy of which is attached as Exhibit "1" and
17 incorporated by reference.

18 7. Respondent has subjected her license to discipline under Business and
19 Professions Code section 2878(a), in conjunction with section 2878.5(c), on the grounds of
20 unprofessional conduct, in that Respondent was convicted of crimes involving alcohol and/or PCP, a
21 controlled substance and dangerous drug, as described in Accusation No. VN-2006-1433.

22 8. Respondent has subjected her license to discipline under Business and
23 Professions Code section 2878(a), in conjunction with section 2878.5(b), on the grounds of
24 unprofessional conduct, in that Respondent used a controlled substance, and/or alcoholic beverages,
25 in a manner dangerous to herself and others, as described in Accusation No. VN-2006-1433.

26 9. Respondent has subjected her license to discipline under Business and
27 Professions Code section 2878(a), in conjunction with section 2878.5(a), on the grounds of
28 unprofessional conduct, in that Respondent unlawfully obtained or possessed PCP, a controlled

1 substance and dangerous drug, as described in Accusation No. VN-2006-1433.

2 **DETERMINATION OF ISSUES**

3 Based on the foregoing Findings of Fact, Respondent has subjected her license to
4 discipline under Business and Professions Code sections 490, 2878(a), 2878(f), 2878.5(a), 2878.5(b),
5 and 2878.5(c) and California Code of Regulations, title 16, section 2521.

6 **LOCATION OF RECORD**

7 The record on which this Default Decision is based is located at the Sacramento office
8 of the Bureau of Vocational Nursing and Psychiatric Technicians.

9 **ORDER**

10 **WHEREFORE**, the Bureau of Vocational Nursing and Psychiatric Technicians
11 makes the following order:

12 Vocational Nurse License Number VN 204442 authorizing Respondent to act as a
13 vocational nurse is hereby revoked.

14 Respondent shall have the right to petition for reinstatement of the aforesaid license
15 pursuant to the provision of section 2878.7(a)(1) of the Business and Professions Code.

16 Respondent shall not be deprived of making any further showing by way of
17 mitigation; however, such showing must be made directly to the Bureau of Vocational Nursing and
18 Psychiatric Technicians, 2535 Capitol Oaks Drive, Suite 205, Sacramento, California, 95833 prior to
19 the effective date of this Decision.

20 This Default Decision shall become effective on February 8, 2009.

21 Dated and signed December 30, 2008.

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24 PATRICIA HARRIS
25 Deputy Director, Board/Bureau Support
26 Department of Consumer Affairs

27 Attachments: Exhibit "I", Accusation No. VN-2006-1433 and Declaration of Service
28

Exhibit "1"
Accusation No. VN-2006-1433 and Declaration of Service

NOV 12 2008

**Board of Vocational Nursing
and Psychiatric Technicians**

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**BEFORE THE
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE BUREAU OF VOCATIONAL NURSING AND
PSYCHIATRIC TECHNICIANS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. VN-2006-1433

ROSALINDA MARTINEZ
aka ROSEALINDA MARTINEZ
320 S. Montclair Street
Bakersfield, CA 93309

A C C U S A T I O N

Vocational Nurse License No. VN 204442

Respondent.

Complainant alleges:

PARTIES

1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this
Accusation solely in her official capacity as the Executive Officer of the Bureau of Vocational
Nursing and Psychiatric Technicians, Department of Consumer Affairs (Bureau).

2. On or about May 28, 2003, the Bureau issued Vocational Nurse License
No. VN 204442 to Rosalinda Martinez aka Rosealinda Martinez (Respondent). The Vocational
Nurse License was in full force and effect at all times relevant to the charges brought herein and
expired on August 31, 2008. The license is currently in delinquent status.

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JURISDICTION

3. This Accusation is brought before the Director of Consumer Affairs (Director) for the Bureau, under the authority of the following laws. All Section references are to the Business and Professions Code (Code) unless otherwise indicated.

STATUTORY PROVISIONS

4. Section 22 states:

“(a) ‘Board’ as used in any provisions of this Code, refers to the board in which the administration of the provision is vested, and unless otherwise expressly provided, shall include ‘bureau,’ ‘commission,’ ‘committee,’ ‘department,’ ‘division,’ ‘examining committee,’ ‘program,’ and ‘agency.’

“(b) Whenever the regulatory program of a board that is subject to review by the Joint Committee on Boards, Commissions, and Consumer Protection, as provided for in Division 1.2 (commencing with Section 473), is taken over by the department, that program shall be designated as a ‘bureau.’”

5. Section 101.1, subdivision (b), states:

“(1) In the event that any board, as defined in Section 477, becomes inoperative or is repealed in accordance with the act that added this section, or by subsequent acts, the Department of Consumer Affairs shall succeed to and is vested with all the duties, powers, purposes, responsibilities and jurisdiction not otherwise repealed or made inoperative of that board and its executive officer.

“(2) Any provision of existing law that provides for the appointment of board members and specifies the qualifications and tenure of board members shall not be implemented and shall have no force or effect while that board is inoperative or repealed. Every reference to the inoperative or repealed board, as defined in Section 477, shall be deemed to be a reference to the department.”

6. Section 118, subdivision (b), provides, in pertinent part, that the expiration of a license shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Under

1 Section 2892.1, the Board may renew an expired license at any time within four years after the
2 expiration.

3 7. Section 150 states: "The department is under the control of a civil
4 executive officer who is known as the Director of Consumer Affairs."

5 8. Section 477 states:

6 As used in this division:

7 "(a) "Board" includes "bureau," "commission," "committee," "department,"
8 "division," "examining committee," "program," and "agency."

9 "(b) "License" includes certificate, registration or other means to engage in a
10 business or profession regulated by this code."

11 9. Section 490 provides, in pertinent part, that the Board may suspend or
12 revoke a license when it finds that the licensee has been convicted of a crime substantially related
13 to the qualifications, functions or duties of a licensed vocational nurse.

14 10. Section 2875 provides, in pertinent part, that the Board may discipline the
15 holder of a vocational nurse license for any reason provided in Article 3 (commencing with
16 section 2875) of the Vocational Nursing Practice Act.

17 11. Section 2878 states, in pertinent part:

18 "The Board may suspend or revoke a license issued under this chapter [the
19 Vocational Nursing Practice Act (Bus. & Prof. Code, 2840, et seq.)] for any of the following:

20 "(a) Unprofessional conduct,

21

22 "(f) Conviction of a crime substantially related to the qualifications, functions,
23 and duties of a licensed vocational nurse, in which event the record of the conviction shall be
24 conclusive evidence of the conviction. . . ."

25 12. Section 2878.5 states, in pertinent part:

26 In addition to other acts constituting unprofessional conduct within the meaning
27 of this chapter [the Vocational Nursing Practice Act] it is unprofessional conduct for a person
28 licensed under this chapter to do any of the following:

1 "(a) Obtain or possess in violation of law, or prescribe, or except as directed by
2 a licensed physician and surgeon, dentist or podiatrist administer to himself or herself or furnish
3 or administer to another, any controlled substance as defined in Division 10 of the Health and
4 Safety Code, or any dangerous drug as defined in Section 4022.

5 "(b) Use any controlled substance as defined in Division 10 of the Health and
6 Safety Code, or any dangerous drug as defined in Section 4022, or alcoholic beverages, to an
7 extent or in a manner dangerous or injurious to himself or herself, any other person, or the public,
8 or to the extent that the use impairs his or her ability to conduct with safety to the public the
9 practice authorized by his or her license.

10 "(c) Be convicted of a criminal offense involving possession of any narcotic or
11 dangerous drug, or the prescription, consumption, or self-administration of any of the substances
12 described in subdivisions (a) and (b) of this section, in which event the record of the conviction is
13 conclusive evidence thereof."

14 13. Section 2878.6 states:

15 "A plea or verdict of guilty or a conviction following a plea of nolo contendere
16 made to a charge substantially related to the qualifications, functions and duties of a licensed
17 vocational nurse is deemed to be a conviction within the meaning of this article. The board may
18 order the license suspended or revoked, or may decline to issue a license, when the time for
19 appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order
20 granting probation is made suspending the imposition of sentence, irrespective of a subsequent
21 order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw
22 his plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
23 dismissing the accusation, information or indictment."

24 14. Section 11032 of the Health and Safety Code provides, in pertinent part,
25 that the term "narcotics" means controlled substances classified in Schedule I or II as defined in
26 section 11054 or 11055 of that code.

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1 15. Section 11032 of the Health and Safety Code provides, in pertinent part,
2 that the term "restricted dangerous drugs" means controlled substances classified in Schedules III
3 and IV as defined in sections 11056 and 11057 of that code.

4 REGULATORY PROVISIONS

5 16. California Code of Regulations, title 16, section 2521 states:

6 "For the purposes of denial, suspension, or revocation of a license pursuant to
7 Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or
8 act shall be considered to be substantially related to the qualifications, functions or duties of a
9 licensed vocational nurse if to a substantial degree it evidences present or potential unfitness of a
10 licensed vocational nurse to perform the functions authorized by his license in a manner
11 consistent with the public health, safety, or welfare. Such crimes or acts shall include but not be
12 limited to those involving the following:

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14 "(f) Any crime or act involving the sale, gift, administration, or furnishing of
15 "narcotics or dangerous drugs or dangerous devices" as defined in Section 4022 of the Business
16 and Professions Code."

17 COST RECOVERY

18 17. Section 125.3 provides, in pertinent part, that the Board may request the
19 administrative law judge to direct a licensee found to have committed a violation or violations
20 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
21 enforcement of the case.

22 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

23 18. PCP (phencyclidine) is a Schedule II controlled substance as designated by
24 Health and Safety Code section 11055(e)(3). It is an addictive dissociative anesthetic that is used
25 for the mind-altering, hallucinogenic effects it produces. It is categorized as a dangerous drug
26 pursuant to Business and Professions Code section 4022.

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FIRST CAUSE FOR DISCIPLINE

(Convictions of Substantially Related Crimes)

19. Respondent is subject to disciplinary action under sections 490 and 2878, subdivision (f), in conjunction with California Code of Regulations, title 16, section 2521, in that Respondent was convicted of crimes substantially related to the qualifications, functions or duties of a licensed vocational nurse which to a substantial degree evidence her present or potential unfitness as a licensed vocational nurse to perform the functions authorized by her license in a manner consistent with the public health, safety, or welfare. The convictions are as follows:

a. On or about April 24, 2008, after pleading nolo contendere, Respondent was convicted of one felony count of violating Health and Safety Codes section 11377(a) [possession of the controlled substance phencyclidine (PCP)], and one misdemeanor count of violating Vehicle Code section 23152(a) [driving a vehicle while under the influence of alcohol and/or drugs] in the criminal proceeding entitled The People of the State of California v. Rosalinda Martinez aka Rosealinda Martinez (Super. Ct. Kern County, 2008, No. BF122167A. The Court ordered Respondent to serve nine (9) months in jail and/or a residential treatment facility, and to pay fees, fines, and restitution.

b. The underlying factual circumstance occurred on or about January 23, 2008, when California Highway Patrol officers arrested Respondent after they found her to be driving her vehicle while under the influence of alcohol or drugs, and finding in her possession of one-half of a cigarette dipped in PCP.

c. On or about July 6, 2006, after pleading nolo contendere, Respondent was convicted of one misdemeanor count of violating Vehicle Code section 23152(a) [driving a vehicle while under the influence of alcohol] in the criminal proceeding entitled The People of the State of California v. Rosalinda Martinez (Super. Ct. Kern County, 2006, No. BM691448A. The Court ordered Respondent to serve two (2) days jail time, participate in a licensed alcohol education program for three (3) months or longer and pay \$1,690 in fees and fines. Respondent was placed on probation for three (3) years.

1 d. The underlying factual circumstance occurred on or about May 3, 2006,
2 when Bakersfield Police Department officers arrested Respondent after she drove her vehicle off
3 the road into a residence. Respondent's blood alcohol content (BAC) was .097%.

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(Convictions of a Crimes Involving Alcohol and/or Controlled Substances)**

6 20. Respondent is subject to disciplinary action under Section 2878,
7 subdivision (a), in conjunction with Section 2878.5, subdivision (c), on the grounds of
8 unprofessional conduct, in that on or about July 6, 2006, and on or about April 24, 2008,
9 Respondent was convicted of crimes involving alcohol and/or PCP, a controlled substance and
10 dangerous drug, as described more fully in paragraph 19, subdivisions (a) - (d), above.

11 **THIRD CAUSE FOR DISCIPLINE**

12 **(Dangerous Use of Controlled Substances/Alcohol)**

13 21. Respondent is subject to disciplinary action under Section 2878,
14 subdivision (a), in conjunction with Section 2878.5, subdivision (b), on the grounds of
15 unprofessional conduct, in that on or about May 3, 2006, and on or about January 23, 2008,
16 Respondent used a controlled substance, and/or alcoholic beverages, in a manner dangerous to
17 herself and others, as described more fully in paragraph 19, subdivisions (a) - (d) above.

18 **FOURTH CAUSE FOR DISCIPLINE**

19 **(Unlawfully Obtain / Possess Controlled Substance-PCP)**

20 22. Respondent is subject to disciplinary action under Section 2878,
21 subdivision (a), in conjunction with Section 2878.5, subdivision (a), on the grounds of
22 unprofessional conduct, in that on or about January 23, 2008, Respondent unlawfully obtained or
23 possessed PCP, a controlled substance and dangerous drug, as described more fully in paragraph
24 19, subdivisions (a) and (b), above.

25 **DISCIPLINE CONSIDERATIONS**

26 23. To determine the degree of discipline, Complainant alleges that on or
27 about February 13, 2002, after pleading guilty, Respondent was convicted of one misdemeanor
28 count of violating Vehicle Code section 23103 [reckless driving] in the criminal proceeding

1 entitled *The People of the State of California v. Rosealinda Martinez* (Super. Ct. San Bernardino
2 County, 2001, No. TVA87151). The underlying factual circumstance occurred on or about
3 April 15, 2001. The record of the criminal proceeding is incorporated as if fully set forth.

4 **PRAYER**

5 WHEREFORE, Complainant requests that a hearing be held on the matters herein
6 alleged, and that following the hearing, the Director issue a decision:

- 7 1. Revoking or suspending Vocational Nurse License No. VN 204442, issued
8 to Respondent;
- 9 2. Ordering Respondent to pay the Bureau the reasonable costs of the
10 investigation and enforcement of this case, pursuant to Business and Professions Code section
11 125.3; and
- 12 3. Taking such other and further action as deemed necessary and proper.
- 13

14 DATED: November 12, 2008

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17 TERESA BELLO-JONES, J.D., M.S.N., R.N.
18 Executive Officer
19 Bureau of Vocational Nursing and Psychiatric Technicians
20 Department of Consumer Affairs
21 State of California

22 Complainant
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